

## **STATE'S RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF PRETRIAL CREDIT FOR TIME SPENT PURSUANT TO RULE 11**

When a defendant is ordered into the State Hospital for mental treatment, he is entitled to presentence incarceration credit against his eventual sentence for any time spent at the hospital under court order. However, he is not entitled to credit for time spent at the hospital voluntarily.

The State of Arizona, by and through undersigned counsel, respectfully requests this Court to deny the defendant's request to apply all time spent in the custody of the Arizona State Hospital as credit for days served in this matter, based on the following Memorandum of Points and Authorities.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **FACTS:**

According to the Arizona State Hospital Social Service Memo attached, on April 25, 1995 the Court entered an order finding the defendant incompetent. On May 11, 1995, the defendant was ordered to undergo treatment. On May 12, 1995, the defendant was admitted into the Arizona State Hospital.

On October 25, 1995, the defendant remained in the Arizona State Hospital for "Voluntary Treatment." On January 2, 1997, the Psychologist's Report was filed to the Court regarding the defendant's Rule 11 status. On January 6, 1997, the defendant was discharged from "Voluntary Treatment."

#### **LAW AND ARGUMENT:**

The defendant asks for presentence incarceration credit for **all** of the time he spent in the State Hospital. Pursuant to A.R.S. § 13-709, the defendant should receive credit only for the time he was **required** to remain in the State Hospital. A.R.S. § 13-709 (B), Calculation of terms of imprisonment, reads as follows:

B. All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.

When the defendant was free to leave the hospital, but requested to stay voluntarily, he was not “in custody” and he is not entitled to credit for that period. The term “in custody” means actual incarceration in prison or jail, or a restraint from freedom. *State v. Reynolds*, 170 Ariz. 233, 235, 823 P. 2d 681, 683 (1992); *State v. Cereceres*, 166 Ariz. 14, 15, 800 P. 2d 1, 2 (App. 1990). When the defendant was admitted into the Arizona State hospital pursuant to a court order, he was considered to be “in custody.” However, the defendant was eventually told he was free to leave the hospital. Instead of leaving, the defendant voluntarily remained until the doctors determined he was malingering and discharged him to the custody of the Maricopa County Sheriff’s Department. The time the defendant voluntarily remained at the hospital is **not** considered time spent “in custody” because the defendant could have left the hospital at any time.

The State does not oppose the defendant’s receiving presentence incarceration credit from the time between May 12, 1995 and October 25, 1995. However, the State does oppose the defendant’s receiving presentence incarceration credit for the time between October 25, 1995 and January 6, 1997, when the defendant voluntarily remained at the Arizona State Hospital.

#### **CONCLUSION:**

Therefore, the State respectfully requests this Court to deny the defendant’s request to apply all time spent in the custody of the Arizona State Hospital as credit for time served in this matter.

